

CHAPTER IV ELIGIBILITY CRITERIA

SECTION 1 - DETERMINING HOUSEHOLD ELIGIBILITY

4100 DETERMINING HOUSEHOLD ELIGIBILITY

The following steps will lead to the final eligibility determination of a household.

- A. Establish household composition (membership).
- B. Establish the household's residency on the reservation or status as an Indian Tribal Household, if living in a near area.
- C. Determine if the household automatically meets the financial eligibility criteria requirements without testing resources and income (PA, GA, and SSI households).
- D. Determine if the nonassistance household meets financial eligibility criteria requirements:
 - 1. Test the household's net food distribution resources against the resources standards in paragraph 4400, below.
 - 2. Test the household's net food distribution income against the food distribution income standards (see Exhibit M for the contiguous United States and Exhibit M-3 for Alaska, attached) for the appropriate household size.

4101 Determining Eligibility and Benefit Level for Households with a Disqualified Member(s)

The disqualified member is not included when determining the household's size for purposes of assigning the level of USDA foods to be received by the household, or for purposes of comparing the household's net monthly income with the income eligibility standards. See paragraph 4730 for instructions on the handling of the income and resources of a disqualified household member.

SECTION 2 - NONFINANCIAL ELIGIBILITY CRITERIA**4200 NONFINANCIAL ELIGIBILITY STANDARDS**

This section provides a description of the nonfinancial criteria (i.e., residency and household composition) that all households must meet.

4210 RESIDENCY

A household must be living on the reservation in which it files an application for participation. Households living in approved near areas or in FNS service areas in Oklahoma (see paragraph 4212, below) must qualify as an Indian Tribal Household to participate in the program.

For the purposes of determining residency, a household's place of residence does **not** have to be a permanent structure at a fixed address, such as a house, apartment, mobile home or trailer, hogan, or pueblo. Also, an ITOs/State agency can not impose any durational residency requirements. However, persons must be living on the respective reservation, near area, or FNS service area the majority of the time as their primary residence. Persons on the reservation solely for vacation, including weekend and holiday stays, can not be considered residents. No household may participate in SNAP or in the Food Distribution Program in more than one geographical area at the same time.

4211 Citizenship

ITOs/State agencies may choose to either provide or deny program benefits and services to persons who are not U.S. citizens or do not meet the definition of qualified alien at 8 U.S.C. 1641(b). If a State agency chooses to expand participation to unqualified aliens, it should consult with State or tribal legal counsel in the development of any new procedures.

ITOs/State agencies that choose to continue to limit participation to qualified aliens should be aware that section 289 of the Immigration and Nationality Act (INA) provides permanent resident status to persons born in Canada who have at least 50 percent Native American blood. Therefore Canadian Indians who fulfill the requirements of section 289 of the INA are considered to have legal resident status and must be treated the same as qualified aliens for Food Distribution Program purposes. To demonstrate qualification under section 289 of the INA, individuals must show proof of birth in Canada, and certification of at least 50 per centum Native American blood. The following documents, issued by the Immigration and Naturalization Service (INS), identify the holder as qualifying for permanent resident status under section 289 of the INA: INS Form I-551 with the code S13; or unexpired temporary I-551 stamp in Canadian passport or on INS Form 1-94 with the code S13.

4212 Near Area or FNS Service Area

The Food Distribution Program may operate in areas near a reservation and in FNS service areas in Oklahoma, as specified in the ITO's/State agency's Plan of Operation and approved by FNS. Households living in these approved areas may participate in the program as an Indian Tribal Household, if at least one household member is recognized as a tribal member of any Indian tribe (see definition of "Indian Tribal Household" in paragraph 1110, above). The Bureau of Indian

**SECTION 3 - FINANCIAL ELIGIBILITY CRITERIA
CATEGORICALLY ELIGIBLE HOUSEHOLDS****4300 CATEGORICALLY ELIGIBLE HOUSEHOLDS****4310 PA AND SSI HOUSEHOLDS**

Households in which all members are included in a federal public assistance or SSI grant, except those SSI participants discussed in paragraph 3412, above, automatically meet resource and income eligibility requirements for the Food Distribution Program. Therefore, the ITO/State agency will not test any of the resources or incomes of the households against the Food Distribution resource and income standards.

4320 GA HOUSEHOLDS

Households in which all members are included in an FNS approved general assistance grant (see paragraph 3220, above) or a combination of GA, PA, and SSI grants, automatically meet resource and income eligibility requirements for the Food Distribution Program. The ITO/State agency will not test any of the resources or incomes of these households against the Food Distribution resource and income standards.

4330 NONASSISTANCE HOUSEHOLDS

The ITO/State agency must test the resources and incomes of all households, in which one or more members do not participate in PA, SSI and/or GA grants, against the Food Distribution Program resource and income standards. Nonassistance households must meet the financial as well as the nonfinancial eligibility criteria in order to receive USDA foods.

SECTION 4 - RESOURCES**4400 RESOURCES**

This section provides the uniform resource standards and a description of nonexempt and exempt resources.

4410 STANDARD HOUSEHOLD LIMITS FOR RESOURCES

The household's resources at the time the application is filed must be used to determine the household's eligibility. The household's nonexempt resources must be totaled and the amount rounded. Use one of the following two rounding procedures: 1) Round down an amount that ends in 1 through 49 cents and round up an amount that ends in 50 through 99 cents; or 2) Apply the rounding procedure that is currently in effect for the Tribe's/State's Temporary Assistance for Needy Families (TANF) program.

Eligibility must be denied or terminated if the value of nonexempt resources for the household exceeds the resource limits identified in Exhibit M, attached, which are the same limits established for the Supplemental Nutrition Assistance Program. The resource limits are adjusted each year based on increases to the Bureau of Labor Standards Consumer Price Index for All Urban Consumers for the 12-month period ending the preceding June 30, rounded down to the nearest \$250 increment. Each adjustment is based on the unrounded amount for the prior 12-month period.

4420 NONEXEMPT RESOURCES

In determining the resources of a household, the following resources are counted:

- A. Cash on hand;
- B. Money in checking or savings accounts; and
- C. Saving certificates, stocks or bonds, or other readily negotiable and accessible certificates or instruments.

4430 EXEMPT RESOURCES

In determining the resources of a household, the following are not counted:

4431 Life Insurance and Pension Funds

- A. The cash value of life insurance policies;
- B. Pension funds, including funds in pension plans with interest penalties for early withdrawals, such as a Keogh plan or an Individual Retirement Account, as long as the funds remain in the pension plans; and

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- C. The first \$1,500 of the equity value of one bona fide pre-paid funeral agreement per household member. The equity value of a pre-paid funeral agreement is the value that can be legally converted to cash by the household member. For example, an individual has a \$1,200 pre-paid funeral agreement with a funeral home. The conditions of the agreement allow the household to cancel the agreement and receive a refund of the \$1,200 minus a service fee of \$50. The equity value of the pre-paid funeral agreement is \$1,150.

4432 Disaster Payments

Any governmental payments that are designated for the rebuilding of a home damaged in a disaster, if the household is subject to a legal sanction if the funds are not used as intended. Some examples are payments made by the U.S. Department of Housing and Urban Development through the individual and family grant program or disaster loans, or grants made by the Small Business Administration.

4433 Prorated Income

Resources that are being prorated and counted as income (e.g., grants awarded to students or income from self-employment).

4434 Resources Excluded by Law

Following is a listing of resources excluded by express provisions of Federal statute. (This list is not inclusive.)

- A. Up to \$2,000 per year per individual received under the Alaska Native Claims Settlement Act (ANCSA) (Public Law 92-203, Sec. 21(a)). This exclusion applies to bonds and cash dividends on stock received from a Native Corporation under ANCSA;
- B. Payments received under the Sac and Fox Indian Claims Agreement (Public Law 94-189);
- C. Payments received by certain Indian Tribal members under Public Law 94-114, Section 6, regarding submarginal land held in trust by the United States;
- D. Payments received by certain Indian Tribal members under Public Law 94-540 regarding the Grand River Band of Ottawa Indians;
- E. Reimbursements from the Uniformed Relocation Assistance and Real Property Acquisition Policy Act of 1970 (Public Law 91-646, Section 216);
- F. Payments made as a result an emergency or major disaster in accordance with Section 312(d) of the Disaster Relief Act of 1974 (Public Law 93-288), as amended by the Disaster Relief and Emergency Assistance Amendments of 1988 (Public Law 100-707) (e.g., payments to farmers during natural disasters);
- G. Interests of individual Indians in trust or restricted lands. Interests include the Indian's right to or legal share of the trust or restricted land, and any income accrued from the funds in trust or the restricted lands (see paragraph 4543G, below);

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- H. Student financial assistance provided under Title IV of the Higher Education Act, and/or funds received under a Bureau of Indian Affairs student assistance program (20 U.S.C.1087uu);
- I. Stipends paid to Indian vocational training students under the Carl D. Perkins Vocational and Applied Technology Education Act (Public Law 101-392). Stipends are defined as a subsistence allowance to cover attendance costs. Attendance costs are tuition and mandatory fees, rental or purchase of any equipment required of all students in the same course of study, books, materials and supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending on at least a halftime basis, as determined by the institution.
- J. Payments provided under Public Law 104-204 to cover the health care of children with spina bifida who were born to Vietnam veterans.
- K. Payments made to members of the Standing Rock Sioux Tribe and the Three Affiliated Tribes (Ft. Berthold Indian Reservation) under Section 3505 of Public Law 102-575, the Reclamation Projects Authorization and Adjustment Act of 1992. Locally, these payments may be identified as Joint Tribal Advisory Committee funds, Standing Rock Sioux Tribe Economic Recovery funds, or Three Affiliated Tribes Economic Recovery funds.

4440 Exempt Income Treated as a Resource

Lump sum payments as described in paragraph 4549D, below, must be counted as resources in the month received. Land lease and treaty income distributed on an annual basis are considered lump-sum payments (see paragraph 4549E, below). Land lease and treaty income distributed more frequently than annually are treated as unearned income (see paragraph 4530J, below).

4450 Jointly Owned Resources

Resources owned jointly by separate households must be prorated between or among those households, unless the applicant household can demonstrate that the resources are inaccessible to it because access to the value of the resource is dependent upon the agreement of a joint owner who refuses to comply.

4460 Resources of Disqualified Members

The nonexempt resources of individuals disqualified from participation in the Food Distribution Program are counted in their entirety when determining the eligibility of the remaining household members (see paragraph 4730, below).

SECTION 5 - INCOME**4500 INCOME**

This section defines nonexcluded and excluded income and allowable deductions.

Household income includes all income from whatever source, except for the exclusions listed in paragraph 4540, below. Income is categorized as earned or unearned. The ITO/State agency must count nonexcluded that is reasonably anticipated to be received over the proposed certification period.

4510 BASIS OF NATIONAL INCOME ELIGIBILITY STANDARDS

In accordance with 7 CFR 253.6(e), the income eligibility standards for the Food Distribution Program are the net monthly eligibility standards for SNAP, increased by the amount of the applicable standard deduction. The income eligibility standards are adjusted each October 1, as necessary, to reflect changes in SNAP income eligibility limits and standard deductions. The income eligibility standards are listed in Exhibit M and Exhibit M-3 of this handbook. Revised exhibits will be provided annually by the appropriate FNS Regional Office.

4511 Income Eligibility Standards for Nonassistance Households

The ITO/State agency must apply the uniform national income eligibility standards for the Food Distribution Program to nonassistance households. Households that are categorically eligible are treated in accordance with the provisions in paragraphs 4310 and 4320, above.

4520 EARNED INCOME

The following types of income are considered earned:

- A. Wages. All wages and salaries of an applicant household. The portion of wages that is garnished for court-ordered support or alimony is considered income (see paragraph 4542.1, below).
- B. Self-employment. The gross income from a self-employment enterprise, including the net profit from the sale of any capital goods or equipment related to the business. Payments from roomers and returns on rental property are considered self-employment income (see paragraph 4720, below).
- C. Training Allowances. Training allowances from vocational and rehabilitative programs sponsored by Federal, State, or local governments to the extent they are not a reimbursement.
- D. Work Study Earnings. College work study earnings are considered earned income, unless excluded by law. Work study programs authorized by Title IV of the Higher Educational Act (20 U.S.C. 1087uu) are excluded; however, some Federal work study programs are not Title IV programs.

4530 UNEARNED INCOME

The following types of income are considered unearned. (This list is not inclusive.)

- A. Assistance Payments. Assistance payments from Federal or federally aided public assistance programs, such as supplemental security income (SSI) or Temporary Assistance for Needy Families (TANF); general assistance (GA) programs, or other assistance programs based on need.
- B. Pensions, Disability Payments and Social Security. Annuities; pensions; retirement accounts; veteran's or disability benefits; workman's or unemployment compensation; old-age, survivors' or social security benefits; strike benefits. The gross amount of these payments is always used, even if taxes and/or other amounts are withheld.
- C. Foster Care, Support and Alimony. Foster care payments for children or adults counted as members of the household in which they reside. However, foster care payments for individuals that are categorized as boarders would not be counted as unearned income (see paragraph 3415, above). Support, such as child support, or alimony payments made directly to the household from nonhousehold members.
- D. Student Financial Assistance. Scholarships, educational grants, fellowships, deferred payment loans for education, veteran's educational benefits and the like, unless excluded by law. Student financial assistance provided under Title IV of the Higher Educational Act (20 U.S.C. 1087uu) is excluded (see paragraph 4543F, below).
- E. Grants, Interest Payments. Payments from government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source that can be construed to be a gain or benefit.
- F. Income from Disqualified Members. The earned income (less the 20 percent earned income deduction) and unearned income of a disqualified household member less the pro rata share for the disqualified individual. If, for example, there are six members of a household and one of those persons is disqualified, the pro rata share is one-sixth of the income. The household receives five-sixths of the disqualified member's income for Food Distribution Program eligibility purposes.
- G. Federal Housing Administration's "Family Living Plan". Payments received on a monthly basis for household expenses.
- H. Per Capita Payments from Gaming and Other Tribal Enterprises. Profits from gaming and other tribal enterprises paid to tribal members on a regular basis, regardless of the frequency.
- I. Land-Lease and Treaty Income. Land lease and treaty income payments, if payments are received more frequently than annually. See paragraph 4549D for treatment of land-lease and treaty income distributed on an annual basis.
- J. Adoption Subsidies. Adoption subsidies, if they are received on a recurring basis.

4640 CALCULATION OF NET MONTHLY INCOME

The following steps lead to the determination of a household's net monthly income. See paragraphs 4710 and 4720, below, for more details on determining monthly income for households with student financial assistance or self-employment income.

- A. Total Gross Earned Income. Add together the gross monthly income earned by all household members to determine the household's total gross earned income. Do not round at this point.
- B. Total Self-Employment Income. If applicable, add together the self-employment income (as calculated at paragraph 4727, below) from the various enterprises engaged in by all household members to determine the household's total self-employment income. Do not round at this point.
- C. Total Gross Earned and Self-Employment Income. Add together the total gross earned income from 4640A, above, and the total self employment income from 4640B, above. Do not round at this point.
- D. Net Monthly Earned Income. Subtract 20 percent from the total amount from 4640C, above, to determine the net monthly earned income. Do not round at this point.
- E. Unearned Income. Add to net monthly earned income (4640D), the total monthly unearned income of all household members, minus income exclusions allowed under paragraph 4540, above. Do not round at this point.
- F. Student Financial Assistance. If applicable, add the average monthly student financial assistance (as calculated at paragraph 4711, below). Do not round at this point.
- G. Other Allowable Deductions. Subtract allowable monthly expenses for dependent care, child support, and Medicare Part B Medical Insurance and Part D Prescription Drug Coverage premiums, if applicable. Do not round at this point.
- H. Round the total amount from 4640G, above. Use one of the following two rounding procedures: 1) Round down an amount that ends in 1 through 49 cents and round up an amount that ends in 50 through 99 cents; or 2) Apply the rounding procedure that is currently in effect for the Tribe's/State's Temporary Assistance for Needy Families (TANF) program.
- I. Compare the rounded amount from 4640H, above, to the income standards at Exhibit M, attached.

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- D. When Self-Employment Enterprise is a New Business. If a household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be prorated over the period of time the business has been in operation and the monthly amount projected for the coming year. However, if the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to be able to base a longer projection.

4726 Stable and Unstable Self-Employment Income

- A. Stable Self-Employment Income. Self-employment income and expenses may be fairly consistent on a monthly or annual basis. If the household anticipates that its self-employment income and expenses will not change significantly, then the ITO/State agency may choose to use the household's Internal Revenue Service (IRS) filings as a guide in determining the household's anticipated self-employment income for the proration period (see paragraph 3532, above).
- B. Unstable Self-Employment Income. Self-employment income and expenses may vary from month to month, or year to year, and the previous year's tax return may not reflect the household's anticipated circumstances for the proration period. The ITO/State agency should review the household's most recent income and expense receipts, and attempt to determine, with the household, what its anticipated income and expenses will be for the proration period. When determining anticipated self-employment income, the ITO/State agency must include any capital gains the household anticipates it will receive during the proration period (see paragraph 4722, above).

4727 Determining Monthly Self-Employment Income

The following steps should be followed in determining the monthly income for each self-employment enterprise engaged in by the household:

- A. Determine the period over which the self-employment income will be prorated (see paragraph 4725, above). For example, a landscaper works 10 months out of the year, but this income represents his annual income, so his self-employment income will be prorated over a 12-month period.
- B. Total the gross self-employment income (including capital gains) for the period of proration. For example, the landscaper received payments totaling of \$20,965.34 over the 10 months that he worked.
- C. Subtract the total costs of doing business from the total gross self-employment income. For example, the landscaper had receipts totaling \$9,784.85 for allowable costs of doing business (e.g., lawnmowers and other equipment, gas and oil for the equipment, business advertisements, business cards, etc.). This leaves self-employment income of \$11,180.49 ($\$20,965.34 - \$9,784.85 = \$11,180.49$).

Reminder: Only allowable business expenses associated with this enterprise can be subtracted from the income of this enterprise. Business expenses from another self-employment enterprise cannot be subtracted from the landscaping business income.

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- D. Divide the result from 4727C, above, by the number of months determined in 4727A, above. For example, the landscaper's monthly self-employment amount would be \$931.71 (\$11,180.49 ÷ 12 months = \$931.71).
- E. This amount is the monthly self-employment amount. Apply this amount (and the monthly self-employment amount from any other self-employment enterprise) to the calculation of the household's monthly income at paragraph 4640B, above.

NOTE: When using the household's most recent tax return as a guide, certain business deductions that are allowed for income tax purposes are not considered allowable costs of doing business for Food Distribution Program purposes. For example, depreciation is an allowable business deduction for IRS purposes, but **is not** an excludable cost of doing business under the Food Distribution Program.

Also, certain items are counted as income for income tax purposes that are not counted as income for Food Distribution Program purposes. The following are items listed as income for income tax purposes that are not considered income for Food Distribution Program purposes:

Schedule C: Line 6 – Federal and State gas or fuel tax credit or refund

Schedule F: Line 7 - Loans
 Line 8 - Crop insurance proceeds/disaster payments
 Line 10 - Federal and State gas or fuel tax credit or refund

4730 HOUSEHOLDS WITH DISQUALIFIED MEMBERS

Individual household members may be disqualified from the Food Distribution Program for several reasons (see paragraph 3413, above). During the period of time a household member is disqualified, the following procedures must be used to determine the eligibility of any remaining household members for participation in the Food Distribution Program.

4731 Applying Financial Eligibility Standards

- A. **Resources.** The total amount of the nonexempt resources of the disqualified member is counted in determining the eligibility of the remaining household members. If a disqualified member acquires additional resources during the disqualification period, these are also considered available to the remaining household members.
- B. **Income.** A pro rata share of the nonexcludable income of the disqualified member is counted as income to the remaining members. This pro rata share is calculated by first subtracting the 20 percent earned income deduction from the disqualified member's earned income, if applicable, and dividing the total income evenly among the household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members. For example, if the disqualified individual was a member of a four-person household, 3/4 of the income of the disqualified member (after the earned income deduction is subtracted, if applicable) would be counted as income to the household.